IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4852 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEPUTY EXECUTIVE ENGINEER

Versus

MAFATBHAI M CHUNARA HEIRS OF MAGANBHAI G CHUNARA

Appearance:

1. Special Civil Application No. 4852 of 1994

Mr. M.K. Patel, AGP for Petitioner No. 1

MR PC MASTER for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/10/2002

ORAL JUDGEMENT

Heard learned AGP Shri M.K. Patel for the petitioner and Mr. P.C. Master for the respondent

workman. By this petition, the petitioner has challenged the award made by the labour court concerned in Reference No. 895 of 1992 dated 30.10.1993 wherein the labour court has granted full back wages for a period from February, 1983 to 31st December, 1989.

During the course of hearing, learned Asstt. Government Pleader Mr. M.K. Patel for the petitioner has submitted that the labour court has committed gross error in setting aside the order of termination; that the respondent was working as a watchman in the year 1978-79 but his services were not terminated as alleged and that he has not completed 240 days continuous service with the petitioner and, therefore, there was no need to comply with the provisions of section 25-F of the Industrial Disputes Act. He has further submitted that there was no work available with the petitioner and, therefore, the respondent workman was not called by the petitioner. He has also submitted that at the time when the deposition of the respondent was recorded through commissioner appointed by the court on 3.7.1993 at Exh. 21, the respondent was aged about 64 years and, therefore, the respondent is not entitled for any back wages and the reinstatement. He has submitted that in respect of this fact, the petitioner has produced document namely copy of voters list wherein name of the workman is there and his age has been shown to be of 75 years. He has also submitted that the said list was bearing the signature of the officer concerned. He has submitted that the labour court has committed error in ignoring this aspect of the matter while granting full back wages in favour of the respondent workman for a period of about five years. He has further submitted that the respondent was not in a position to appear before the labour court for giving deposition and, therefore, commissioner was appointed by the court for recording deposition of the respondent and the labour court ought to have kept this aspect in mind while considering the age of the respondent and while granting back wages for the aforesaid period and ought to have held that the respondent is not entitled for any back wages.

On the other hand, learned advocate Mr. P.C. Master appearing for the respondent has submitted that before the labour court, it was not in dispute that the respondent had completed more than one year of service with continuity and at the time of termination, no notice or notice pay in lieu thereof has been given and no retrenchment compensation has been paid to the workman at the time of termination of his service and, therefore, the labour court was right in setting aside the order of

termination. He has also submitted that according to the deposition of the workman dated 3rd July, 1993, the respondent was aged about 64 years and not 74 years and the evidence produced by the petitioner was not bearing the signature of the officer concerned and, therefore, the labour court was right in disbelieving the said evidence. However, as regards back wages, he has submitted that looking to the facts and circumstances of the case, this court may pass appropriate orders and may exercise discretionary powers in the interest of justice.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award made by the labour court. It is an admitted fact that before the labour court, the petitioner has not disputed the fact that the respondent has completed 240 days continuous service as he was working with the petitioner for more than one year. Non compliance of section 25-F of the Industrial Disputes Act, 1947 has also not been disputed by the petitioner before the labour court. According to my view, therefore, on the basis of these undisputed facts, the labour court was right in setting aside the order of termination. Before this Court also, the petitioner has not been able to prove that the findings recorded by the labour court as regards completion of 240 days continuous service and non compliance of section 25-F of the Industrial Disputes Act, 1947 are contrary to record. Therefore, now the only question required to be examined by this court is the question of back wages. The services of the respondent were terminated in February, 1983 and the dispute raised by the respondent workman was referred for adjudication on 20th March, 1985. Thus, there was delay of about two years in raising of an industrial dispute. The respondent was working with the petitioner as temporary watchman and worked for a period of more than three years. The petitioner has not produced any relevant documents before the labour court to disprove the oral evidence of the respondent workman in that regard. Before the labour court, no oral evidence was adduced by the petitioner to disprove the facts of oral evidence of the respondent workman. No documentary evidence has been produced by the petitioner to show that the respondent has not completed one year's continuous service with the petitioner as alleged in his statement of claim and oral evidence. As regards the age of the respondent workman, in deposition at Exh. 21, the respondent has deposed that he was about 64 years old on 3rd July, 1993 whereas in the document namely copy of voters' list produced by the petitioner at Exh. 22/1 for the year 1978, age of the respondent was shown as 75

years but the said document was not proved before the labour court by examining any concerned officer before the labour court and, therefore, this document has not been proved before the labour court and the same has not been taken into consideration by the labour court. Therefore, in absence of any valid document as regards age of the respondent workman, according to my opinion, the labour court was right in believing the age of the respondent on 3rd July, 1993 as 64 years because of the fact that the voters list produced by the petitioner has not been proved by the petitioner before the labour court by examining the officer concerned. Admittedly, the respondent has crossed the age of superannuation and, therefore, there was no question of granting reinstatement and the labour court was, therefore, right in deciding that aspect of the matter. However, according to my opinion, labour court has committed error in granting full back wages for the period from the date of termination February, 1983 to 31st December, 1989. While granting full back wages, the labour court has not taken into consideration the delay in raising of an industrial dispute. In view of the delay of about two years in raising of an industrial dispute, the labour court ought not to have granted back wages from the date of termination February, 1983 but it ought to have granted back wages from the date of the reference 20th March, 1985 because the workman has raised the dispute after about two years. Further, it ought to have been appreciated by the labour court that the matter remained pending before it for about eight years for no fault of either side. The labour court ought to have appreciated the fact that the respondent was working as temporary watchman having more than three years service and was not a permanent employee of the petitioner. The labour court ought to have appreciated the fact that because of the technical breach of section 25-F, it was setting aside the termination and therefore, it ought not to have granted full back wages. Therefore, according to my opinion, looking to the over all facts and circumstances of the case, considering the delay in raising the dispute and also considering service rendered by the respondent as temporary watchman for a period of about three years or so, and also considering the pendency of the reference before the labour court for a period of about eight years, the petitioner being the State Authority, award of back wages is required to be reduced. Considering the over all circumstances as stated above, according to my view, it would be just and proper if the award of back wages for a period from the date of reference 20th March, 1985 till 31st December, 1989 is reduced by 50 per cent instead of full back wages from February, 1983 till 31st

December, 1989 i.e. from the date of termination February, 1983 till 20th March, 1985 which is the date of reference, the workman is not entitled to any back wages in view of delay in raising of an industrial dispute and from the date of reference 20th March, 1985 till 31st December, 1989, the workman is entitled to only 50 per cent back wages. To that extent, the impugned award is required to be modified without disturbing the rest of the award made by the labour court.

Accordingly, for the reasons recorded hereinabove, this petition is partly allowed. The award made by the labour court, Anand in Reference No. 895 of 1992 dated 30.10.1993 is hereby modified in so far as it relates to 50 % back wages only for a period from 20th March, 1985 i.e. from the date of reference till 31st December, 1989 instead of full back wages from February, 1983 till 31st December, 1989 as has been granted by the labour court under the impugned award. Rule is made absolute in aforesaid terms with no order as to costs.

Dt.14.10.2002. (H.K. Rathod,J.)

Vyas